

MEMORANDUM

June 27, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: BRIAN T. CHU
Principal Deputy County Counsel
General Litigation Division

RE: **Claim of Gabriel Rosales**

DATE OF
INCIDENT: March 20, 2007

AUTHORITY
REQUESTED: \$58,550.49

COUNTY
DEPARTMENT: Department of Public Works

CLAIMS BOARD ACTION:

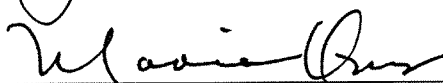
☒ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval


_____, Chief Executive Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on August 6, 2007

SUMMARY

This is a recommendation to settle for \$58,550.49 the claim presented by Gabriel Rosales, seeking compensation for damages to his home and personal property caused by a sewer back-up, resulting from a sewer main line blockage on March 20, 2007.

LEGAL PRINCIPLE

The County may be held liable for inverse condemnation based on a claim for property damages caused by a sewer blockage.

SUMMARY OF FACTS

At approximately 3:30 p.m. on March 20, 2007, the County received a complaint about a sewer problem at the residence of Gabriel Rosales located at 253 Pamela Road, in the unincorporated County area near the City of Monrovia. A County sewer crew investigated the complaint and observed "black water" had flooded Mr. Rosales's kitchen, bedrooms, bathrooms, and hallway. Additionally, the County crew found wastewater overflowing out of Manhole No. 16. The main line was rodded between Manhole Nos. 23 and 16, and Manhole Nos. 36 and 23, which relieved a grease stoppage. The main line sections were then hydro-washed, and normal flow was restored. The wastewater, however, caused damage to the interior baseboard and associated trim, furnishings and other personal property in Mr. Rosales's home.

This section of the main line had been on a semi-annual maintenance schedule as part of the Consolidated Sewer Maintenance District's ("CSMD") preventative maintenance program. Previous to this incident, this section of the main line was inspected on August 3, 2006, and hydro-washed on August 10, 2006, to break down a grease, garbage and sand blockage between Manhole Nos. 30 and 16. There is no history of a prior sewer back-up in this section of the main line.

DAMAGES

The clean-up of Mr. Rosales's home was performed through the Public Works Department's ("Department") Rapid Response Program. Clean-up and restoration of the home includes removal of the baseboard and trim. Wood floor planking and carpeting were removed and require replacement in the areas of contamination. Environmental testing was performed through this program to mitigate the cost of remediation. Because Mr. Rosales's home was rendered uninhabitable during the clean-up, Mr. Rosales and his family had to stay at a hotel for eight days. Mr. Rosales's claim for personal property damages was adjusted for depreciation.

Mr. Rosales's total damages are categorized as follows:

Property Clean-Up & Testing	\$23,191.32
Property Restoration	\$27,287.97
Displacement Cost (Hotel)	\$ 1,906.20
Personal Property Damage	<u>\$ 6,165.00</u>
TOTAL	\$58,550.49

If Mr. Rosales files suit and prevails on the inverse condemnation claim, he will also be entitled to attorneys' fees and expert costs. Mr. Rosales is not yet represented by counsel.

STATUS OF CASE

Mr. Rosales presented this claim on April 2, 2007. He has until March 26, 2009, to file suit. Under the Department's Rapid Response Program, the County undertakes an immediate on-site investigation by the responding sewer crew which determines the cause of the blockage. If the County determines that liability is undisputed, repairs to the home and settlement negotiations are undertaken expeditiously so that additional litigation costs can be avoided. The County has not yet incurred attorneys' fees or costs in this matter.

EVALUATION

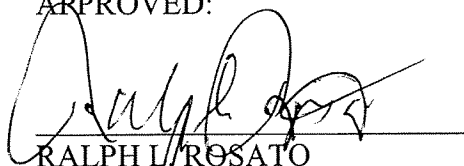
The main sewer line at this location is owned by the County and maintained as part of the CSMD. It is undisputed that grease created a stoppage in the main line and that wastewater backed-up into Mr. Rosales's residence through his lateral line. The absence of any other identifiable cause for the blockage in the main line will likely result in liability for inverse condemnation. While the main line had been inspected and cleaned out within seven months before this incident, the fact remains that the main line did not operate to remove sewage from the area as intended, which is a key element in an adverse condemnation action. Based on this incident, the Department placed this section of the main line on a 30-day periodic cleaning cycle.

The amounts claimed for clean-up and environmental testing were evaluated and appear reasonable. Also, the amount claimed for repair was evaluated with computer software used as a standard in the insurance industry for property damage claims. Mr. Rosales's claim for damaged personal property was negotiated to account for depreciation and appears reasonable. If Mr. Rosales were to file suit and prevail based on inverse condemnation, he would be entitled to recover attorneys' fees and expert costs. When added to the property damages, a total award would significantly exceed the proposed settlement amount.

RECOMMENDATION

We join our third party administrator, Carl Warren & Company, in recommending a total settlement of this matter in the amount of \$58,550.49. The Department of Public Works concurs in this settlement recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read 'Ralph L. Rosato', is written over a horizontal line.

RALPH L. ROSATO
Assistant County Counsel
General Litigation Division

RLR:BTC:RH